

Case No. C 07-3908 SBA

DECLARATION OF PETER KOZELKA

I, Peter Kozelka, declare as follows:

1. I am currently employed by the United States Environmental Protection Agency (EPA), Region IX, as an Environmental Scientist in the Clean Water Act (CWA) Monitoring and Assessment Office, Water Division. I have been employed by EPA since 1997 and have worked in the CWA Monitoring and Assessment Office since 2001.
2. In my position, I am responsible for reviewing CWA section 303(d) lists submitted by the State of California, as well as drafting EPA decision documents relating to those lists. I am also involved in the review and approval/disapproval of total maximum daily load (TMDL) documents that are submitted by the State of California to EPA Region IX.
3. As part of my duties, I oversaw the assembly of the administrative record of documentary material considered by EPA in making the challenged decision here, i.e., EPA Region IX's approval of the State of California's 2006 303(d) listing decision not to include the Klamath River and the Copco and Iron Gate Dam reservoirs as impaired due to *Microcystis aeruginosa* and microcystin toxin.
4. The materials comprising the administrative record for this challenged decision have been assembled, sequentially paginated, and are listed in the attached index as Attachment 2.
5. When I assembled this administrative record, I gathered all of the non-deliberative documents that, to my knowledge, were considered by the Agency in making the challenged decision. In doing so, I consulted with others in EPA Region IX and at EPA Headquarters who were involved in making this decision. All of the documents were in existence at the time the decision was made. Although the administrative record includes screen shots of web sites that post-date the challenged decision, I do not believe that the content of those web sites has materially changed since EPA reviewed them prior to making the decision. When I assembled the documents, I did not consider whether a particular document supported or was contrary to the challenged decision, and included all relevant documents, regardless of whether the document supports or is contrary to EPA's decision.
6. Consistent with long-standing Agency practice, I did not include in the administrative record documents containing solely the policy advice, recommendations, or opinions of EPA employees that were generated as part of the internal consultative process for formulating EPA's decision. Such documents would have included emails between EPA program staff and attorneys related to the decisions, options papers, and notes of individual employees documenting internal meetings. Nor did I include in the administrative record internal drafts of documents related to the decision that were superseded by the later documents. EPA does not keep a log of these materials, have any formal files related to these materials, or necessarily retain them in the normal course of business. The exclusion of such deliberative materials did not in any way depend upon whether the materials supported or were contrary to the challenged decision here.

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7. I hereby certify that to the best of my knowledge, information and belief, the documents identified in the attached index (Attachment 2), constitute the administrative record for EPA's approval of the State of California's 2006 Section 303(d) listing decision not to include the Klamath River and the Copco and Iron Gate Dam reservoirs as impaired due to *Microcystis aeruginosa* and microcystin toxin.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on the 2nd day of November, 2007.



Peter B. Kozelka